

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN LITTLE,

Plaintiff,

v.

DAVE OSTER, et al.,

Defendants.

CASE NO. C07-1317BHS

ORDER DENYING PLAINTIFF'S
MOTIONS FOR INJUNCTIVE
RELIEF, DENYING PLAINTIFF'S
MOTION TO COMPEL
DISCOVERY, GRANTING
PLAINTIFF'S MOTION FOR AN
EXTENSION OF TIME, DENYING
PLAINTIFF'S MOTION FOR
RELIEF FROM ORDER, AND
RENOTING REPORT AND
RECCOMENDATION

This matter comes before the Court on Plaintiff's Motion to Compel Discovery (Dkt. 39), Plaintiff's Motion for Injunctive Relief (Dkt. 39), Plaintiff's Motion to Stay Proceedings (Dkt. 41), Plaintiff's Motion to Restrain Defendants (Dkt. 41), the Report and Recommendation (Dkt. 38) of the Honorable Mary Alice Theiler, United States Magistrate Judge, and Plaintiff's Motion for Relief from Order, Objection to Report and Recommendation, and Injunctive Relief (Dkt. 52). The Court has considered the pleadings filed in support of and in opposition to the motions and the Report and Recommendation and the remainder of the file and hereby denies Plaintiff's motions for injunctive relief, denies Plaintiff's motion to compel discovery, grants Plaintiff's motion

1 for an extension of time, denies Plaintiff's motion for relief, and renotes the Report and
2 Recommendation for the reasons stated herein.

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 On September 10, 2007, Plaintiff filed a Civil Rights Complaint under 42 U.S.C. §
5 1983 alleging that Defendants violated his constitutional rights by placing him in the
6 maximum security wing for protective custody. Dkt. 6.

7 On May 5, 2008, Defendants filed a Motion for Summary Judgment. Dkt. 24. On
8 June 6, 2008, Judge Theiler issued a Report and Recommendation recommending that the
9 Court grant Defendants' Motion for Summary Judgment and dismiss Plaintiff's
10 complaint. Dkt. 38.

11 On June 13, 2008, Plaintiff filed an Objection to Non-Ruling of Motions to
12 Compel Discovery and Injunctive Relief. Dkt. 39. On June 30, 2008, Defendants
13 responded to Plaintiff's objection, but treated the pleading as an objection to the Report
14 and Recommendation. Dkt. 49.

15 On June 18, 2008, Plaintiff filed a Motion to Stay Proceedings and Restrain
16 Defendants. Dkt. 41. Although Plaintiff is unclear in his pleading, he seems to request a
17 stay of the proceedings so that he may have additional time to file objections to the report
18 and recommendation. *Id.* On June 30, 2008, Defendants responded. Dkt. 44.

19 On July 1, 2008, Plaintiff filed a Motion for Relief from Order, Objection to
20 Report and Recommendation, and Injunctive Relief. Dkt. 52.

21 **II. DISCUSSION**

22 **A. Injunctive Relief**

23 Plaintiff has essentially filed three motions for injunctive relief. Dkts. 39
24 (Injunctive Relief), 41 (Restrain Defendants), and 52 (Injunctive Relief). The criteria for
25 granting a preliminary injunction are "(1) a strong likelihood of success on the merits, (2)
26 the possibility of irreparable injury to the plaintiff if preliminary relief is not granted, (3) a
27 balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in
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certain cases).” *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995). Alternatively, a court may grant a preliminary injunction if the moving party shows either “(1) a combination of probable success and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardship tips in its favor.” *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987). In all of Plaintiff’s motions for injunctive relief, Plaintiff argues that the Court should order Defendants to allow him to receive medications for certain disorders. Dkt. 39 at 3; Dkt. 41 at 4. Without these medications, Plaintiff claims that he is unable to adequately prosecute this action and other actions in federal court. Dkt. 41 3-4. Plaintiff has failed to show either a probability of success on the merits on his constitutional violations due to segregated confinement or that he will suffer irreparable injury if the injunction for medications is not granted. Therefore, the Court denies Plaintiff’s motions for injunctive relief for certain medications.

In Plaintiff’s last motion for injunctive relief, Plaintiff argues that the Court should enjoin the prison officials from deficient photocopy services and enjoin Defendants Bloss and Oster from their capacity as law library staff with access to Plaintiff’s legal documents and legal mail envelopes. Dkt. 52 at 10. The prohibition against “reading” legal mail is murky given the authorization to “inspect” it for evidence of a crime or contraband. *See Kalka v. Megathlin*, 10 F. Supp. 2d at 1123 (D. Ariz. 1998). In this case, Plaintiff has failed to show either a probability of success on the merits on his original claims as well as his claims regarding the inspection of his legal mail. Moreover, Plaintiff has failed to show irreparable injury if an injunction is not granted. Therefore, the Court denies Plaintiff’s motion for injunctive relief on these issues.

B. Compel Discovery

Plaintiff has requested that the Court compel Defendant Dave Oster to answer 34 interrogatories related to this action. Dkt. 39 at 1. Discovery must be limited if the Court determines that the discovery sought is unreasonably cumulative or duplicative or is

1 obtainable from a more convenient, less burdensome, or less expensive source; that the
2 seeking party has had ample opportunity to obtain the information sought; or that the
3 burden or expense of the discovery request outweighs its likely benefit. Fed. R. Civ. P.
4 26(b)(2)(C). Based on the merits of this action, Defendants' Motion for Summary
5 Judgment, a preliminary review of the Report and Recommendation, and the balance of
6 the record, the Court finds that the burden to Defendant Oster to reply to Plaintiff's
7 discovery request outweighs the likely benefit of Mr. Oster's answers to Plaintiff's case.
8 Judge Theiler recommends granting Defendants' Motion for Summary Judgment because
9 Plaintiff has failed to exhaust his claims and Plaintiff has failed to set forth actual
10 constitutional violations. *See* Dkt. 38. As such, Plaintiff has failed to show that answers
11 to his discovery requests will have any relevance to exhaustion or failure to state a
12 constitutional violation. Therefore, the Court denies Plaintiff's Motion to Compel.

13 **C. Extension of Time**

14 Although Plaintiff asks for a stay of the proceedings, the Court will consider the
15 pleading as a motion for an extension of time because Plaintiff only requests additional
16 time to file objections to the Report and Recommendation. Dkt. 41 at 3-4. When an act
17 may or must be done within a specified time, the court may, for good cause, extend the
18 time if a request is made, before the original time or its extension expires. Fed. R. Civ. P.
19 6(b). Plaintiff filed his request for an extension on June 18, 2008 and his objections were
20 due on June 27, 2008. Plaintiff has shown that good cause exists for his extension due to
21 his existing injuries and limited ability to access the law library. Dkt. 41 at 1-3. Plaintiff,
22 however, filed his objections on July 1, 2008. Therefore, the Court grants Plaintiff's
23 Motion for an Extension of Time to the extent that was necessary for Plaintiff to file his
24 objections.

25 **D. Relief from Order**

26 Plaintiff has moved for relief from the Order requiring Plaintiff to respond to the
27 Report and Recommendation. Dkt. 52 at 1. The Court, however, has extended Plaintiff's
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1 time to respond and will consider Plaintiff's objections. Therefore, the Court denies
2 Plaintiff's motion for relief as moot.

3 **III. ORDER**

4 Therefore, it is hereby

5 **ORDERED** that Plaintiff's Motion to Compel Discovery (Dkt. 39) is **DENIED**,
6 Plaintiff's Motions for Injunctive Relief (Dkts. 39, 41, and 52) are **DENIED**, Plaintiff's
7 Motion for an Extension of Time (Dkt. 41) is **GRANTED**, and Plaintiff's Motion for
8 Relief from Order (Dkt. 52) is **DENIED** as moot. The Report and Recommendation
9 (Dkt. 38) is renoted for August 1, 2008. Defendants may respond to Plaintiff's objections
10 no later than July 25, 2008. Plaintiff may reply no later than August 1, 2008.

11 DATED this 9th day of July, 2008.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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